

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In Re Purported Negotiated Channel
Arrangements Of

PAXSON DES MOINES
LICENSE, INC,

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File No.: BFRECT-20050210AUC
Facility ID: 81509
MB Docket No. 03-15

To: The Commission

COMMENTS AND OBJECTION

Capital Communications Company, Inc. ("Capital"), by its attorneys, hereby files with the Commission these Comments and Objection regarding the negotiated channel arrangements purportedly entered into among Paxson Des Moines License, Inc. ("Paxson"), holder of the Commission license for television station KFPX(TV), Newton, Iowa, and certain other television licensees, including Capital. Capital holds the Commission license for televisions station WOI-TV, and the Commission construction permit for digital television station WOI-DT, Ames, Iowa.

In its filing on FCC Form 382 (File No. BFRECT-20050210AUC), Paxson certified to the Commission that it had entered into a negotiated channel election arrangement with certain television licensees, including Capital, with respect to KFPX. Prior to having made that filing, Mr. William Watson of Paxson sent a letter to Capital, dated January 13, 2005, which requested that Capital notify Paxson if it had any objection to Paxson's proposal to elect channel 29 for post-transition operation of KFPX. (Copy of letter attached as Exhibit A.) The letter further

stated that if Capital did not object to that proposal by January 24, 2005, Paxson would presume that Capital had no such objection.


Capital responded to Paxson's letter by letter from Mr. Ray Cole to Mr. Watson dated March 14, 2005. (Copy attached as Exhibit B.) In that letter, Capital stated that it had never consented to Capital's purported negotiated channel arrangements as described in the Watson letter, and that Capital did object to Paxson's proposal.

WOI-TV's analog facilities operate on channel 5, a so-called "low VHF" channel, and WOI-DT has been assigned channel 59, an "out-of-core" channel. In the first round of channel elections, Capital elected channel 5 for post-transition operations, but intends to revisit that election in the third round and may elect a different channel at that time, depending upon which channels are then available, pursuant to paragraph 63 of the Commission's Report and Order in the *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television* (MB 03-15, released September 7, 2004). Paxson's proposal to operate on channel 29 following the transition could have an adverse impact on the availability of channels in the third round, and Capital therefore objects to that proposal and to Paxson's statement that it has entered into a negotiated channel arrangement with Capital. Other than the Watson letter, Paxson never communicated with Capital regarding this purported negotiated channel arrangement. Clearly, Paxson cannot merely write a letter to Capital, with which it has had no other communications regarding this matter, inform Capital of Paxson's proposal and request that Capital notify Paxson within a certain period of time if it has objections, and then if no such notice is given within the timeframe unilaterally established by Paxson, expect to be able to assert that the parties have entered into a negotiated channel arrangement.

For the reasons set forth above, Capital hereby objects to the purported negotiated channel arrangements involving Paxson and Capital.

Respectfully submitted,

CAPITAL COMMUNICATIONS COMPANY, INC.

By: 

David D. Burns
Latham and Watkins LLP
555 11th Street, N.W.
Washington, D.C. 20004
(202) 637-2200
Its Counsel

March 15, 2005

CERTIFICATE OF SERVICE

I, David D. Burns, hereby certify that on March 15, 2004, I caused copies of the foregoing Comments and Objection to be sent via express mail, postage prepaid, to the following:

Nazifa Sawez
Federal Communications Commission
445 12th Street, S.W., Room 2-A726
Washington, D.C. 20554

William L. Watson
Paxson Communications Corporation
601 Clearwater Park Road
West Palm Beach, Florida 33401

Mark J. Prak, Esq. (Counsel to KCCI)
Brooks Pierce
1600 Wachovia Capitol Center
Raleigh, NC 27602

Todd D. Gray, Esq. (Counsel to KDIN-TV, KTIN, KRIN, and KBIN-TV)
Dow, Lohnes & Albertson PLLC
1200 New Hampshire Avenue, NW
Washington, DC 20036

David A. O'Connor, Esq. (Counsel to WHO-TV)
Holland & Knight LLP
2099 Pennsylvania Avenue, NW
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Kathryn Schmeltzer, Esq. (Counsel to KD SM-TV)
Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037

John G. Johnson, Jr., Esq. (Counsel to KPWB-TV)
Paul Hastings Janofsky & Walker LLP
875 15th Street, NW
Washington, DC 20005

David Tillotson, Esq. (Counsel to KFXA)
4606 Charleston Terrace, NW
Washington, DC 20007

Meredith S. Senter, Esq. (Counsel to KCWE)
Leventhal Senter & Lerman, PLLC
2000 K Street, NW
Washington, DC 20006

A handwritten signature in black ink, appearing to read "D. Burns", written over a horizontal line.

David D. Burns

PAX

January 13, 2005

VIA FEDERAL EXPRESS

Mr. Ray Cole
President & General Manager
WOI-TV
3903 Westown Parkway
West Des Moines, IA 50266

Re: **KFPX-DT Channel Election**

Dear Mr. Cole:

As you may know, Paxson Des Moines License, Inc. ("Paxson") is the FCC licensee of station KFPX(TV) (Newton, Iowa). KFPX(TV) broadcasts on NTSC Channel 39 but was not assigned a paired DTV channel. In the present round of the channel election process, Paxson wishes to elect Channel 29 for post-transition operation of the station. Election of an unassigned channel at this stage is permissible only pursuant to a negotiated channel arrangement. For KFPX(TV), Paxson does not seek use of a channel assigned to a local station. The FCC has said it will review the station's election for anti-competitive effects.

Accordingly, we hereby request that if you have an objection to KFPX(TV)'s election of Channel 29, please notify the undersigned using the attached form and returning it to me by fax or e-mail at your earliest convenience - but no later than Monday, January 24, 2005. Conversely, if you have no objection, we would appreciate it if you could memorialize this by indicating so on the enclosed form and returning it to me. Alternatively, you may take no action and we will presume there is no objection.

If you have any questions or concerns, please feel free to contact me. Thank you for your consideration.

Sincerely,



William L. Watson
Secretary

Acknowledgement of Channel Election

KFPX (TV) broadcasts on NTSC Channel 19 but was not assigned a paired DTV channel. Paxson believes post-transition operation of KFPX(TV) on Channel 29 will be aggregately preferable in terms of impact on other television stations. Election of an unassigned channel at this stage is permissible only pursuant to a negotiated channel arrangement. Because Paxson wishes to elect a channel unassigned to a local station, it does not anticipate this arrangement to have anti-competitive effects, but the FCC has said it will review stations' elections for such effects. Accordingly, by signing below, [] hereby acknowledges the foregoing and confirms the following:

- ☐ [] has no objection to the election of Channel 29 by KFPX(TV).
- ☐ [] objects to the election of Channel 29 by KFPX(TV) for the following reasons:

This acknowledgement is effective as of the date hereof.

Signature

Name (please print)

Title (please print)

Date



March 14, 2005

Mr. William Watson
Secretary
Paxson Communications Corporation
601 Clearwater Park Road
West Palm Beach, FL 33401

Re: Negotiated Channel Arrangements Regarding KFPX(TV)

Dear Mr. Watson:

I am in receipt of your letter of January 13, 2005 in which you state that Paxson Des Moines License, Inc., holder of the FCC license for television station KFPX(TV) Newton, Iowa, wishes to operate with digital facilities on channel 29 following the end of the transition to digital television service. You further state that election of that channel by KFPX(TV) is permissible only by a negotiated channel election, and you request that Capital Communications Company, Inc. ("Capital"), licensee of television station WOI-TV, Ames, Iowa, notify you of any objection to the election by KFPX(TV) of channel 29 for post-transition operations.

I hereby notify you that Capital does object to that election by KFPX(TV). WOI-TV operates on NTSC channel 5 and has been assigned DTV channel 59. It elected channel 5 as its post-transition channel, but intends to revisit that election in the round three channel elections, and may elect another post-transition channel at that time. Because, among other things, the election of channel 29 by KFPX(TV) could adversely impact the choices available to Capital in the third round elections, we cannot agree with your proposed election.

I am also aware that in the Form 382 filed with the FCC for KFPX(TV), Paxson certified that it has entered into a negotiated channel election arrangement with Capital. You are notified that Capital never agreed to any such arrangement and so such arrangement exists.

If you have any questions regarding this matter, please contact counsel for Capital: David D. Burns, Esq., Latham & Watkins LLP, 555 11th Street, NW, Suite 1000, Washington, DC 20004, (202) 637-2251,

Very truly yours,

Raymond H. Cole, President
For Capital Communications Company, Inc.

cc: Nazifa Naim
Federal Communications Commission
Room 2-A726
445 12th Street, SW
Washington, DC 20554

David D. Burns, Esq.